Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Review;	)	WT Docket No. 01-14
Spectrum Aggregation Limits for	)	
Commercial Mobile Radio Services	)	

To: The Commission

PETITION FOR RECONSIDERATION

Cingular Wireless LLC ("Cingular"), by its attorneys, hereby petitions the Commission to reconsider its *Report and Order* in the above-captioned proceeding.[1] Cingular agrees with *Report and Order*'s finding that "there is meaningful economic competition in CMRS mobile telephony" and that "the spectrum cap rule is no longer necessary in the public interest."[2] Cingular also commends the Commission for its record of processing the overwhelming majority of transfer and assignment applications within ninety days, and strongly supports its goal of continuing this speed of review under the new case-by-case review process.[3]

---

[1] FCC 01-328 (rel. Dec. 18, 2001), *summarized*, 67 Fed. Reg. 1626 (Jan. 14, 2002) ("*Report and Order*"). Cingular notes that it has sought review of two 1998 Biennial Review decisions which retained the spectrum cap. *See Cingular Wireless LLC v. FCC*, Case No. 01-1006 (D.C. Cir. filed Jan. 5, 2001). In light of the issuance of the *Report and Order* in the instant 2000 Biennial Review proceeding, Cingular moved to postpone oral argument, which was granted by the Court on January 15, 2002. At such time as that case is rendered moot by the occurrence of events in this proceeding, Cingular will dismiss its petition for review.

[2] *Report and Order* at ¶¶ 46, 54.

[3] *See Report and Order* at ¶¶ 56-57.

For the reasons set forth below, Cingular requests that the Commission reconsider its decision to retain the cellular cross-interest rule in Rural Service Areas ("RSAs"). Given today's trend towards national and regional calling areas and plans (in many cases coupled with either free or inexpensive long distance service), individual RSAs are simply not segregable from Metropolitan Statistical Areas ("MSAs") from a customer service standpoint. Thus, an examination of competition only on an individual RSA basis skews the competitive analysis in a way that does not reflect the relevant geographic market. The Commission should consider competition based upon actual service areas, consistent with its *Notice of Proposed Rulemaking* in this docket.

I. THE COMMISSION SHOULD RECONSIDER ITS DECISION NOT TO ELIMINATE THE CELLULAR CROSS-INTEREST RULE IN RSA MARKETS

In seeking comment on whether to retain its spectrum aggregation limits, including the cellular cross-interest rule, the Commission's *Notice of Proposed Rulemaking* in this proceeding asked "how should we define the relevant geographic market, *especially in light of the trend toward nationwide footprints and affiliations?*"[4] The *Report and Order*, however, never answers this question. Instead, it proceeds to separately analyze the continued need for the rule on the basis of cellular MSAs and RSAs, respectively, without explaining whether these are the relevant markets and, if so, why they were chosen.[5] The Commission found sufficient competition in

---

[4] 16 F.C.C.R. 2763, 2274 (2001) ("*Notice of Proposed Rulemaking*") (emphasis added).

[5] The failure to properly define the relevant market, while retaining the cellular cross-interest rule, leads to anomalous results. A cellular licensee would be free to acquire 55 MHz of MTA PCS spectrum completely covering its cellular RSA (giving it 80 MHz of spectrum in the RSA), as long as the RSA's population is less than 10 percent of the MTA's population. It could not, however, acquire a second 25 MHz cellular license that would give it far less spectrum in the RSA and no presence in the vast majority of the MTA.

MSAs to eliminate the rule immediately, but too much cellular concentration in RSAs to do so.[6] In making this distinction, the Commission ignores the fact that many RSAs have substantial competition among numerous competitors, while some MSAs have far less. A case-by-case approach can address competitive circumstances as they exist, while the Commission's rule-bound approach arbitrarily treats highly competitive RSAs more restrictively than MSAs where the number of competitors is more limited.

The failure to define the relevant market for purposes of the Commission's competitive analysis and take into account actual carrier service plans is error and should be reconsidered,[7] especially where nearly all carriers addressing the issue supported elimination of the rule in its entirety.[8] The Commission has previously stated that a properly defined geographic market "aggregates those consumers with similar choices regarding a particular good or service in the

---

[6] *See Report and Order* at ¶¶ 82-92.

[7] *See WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) (noting that to make a market power determination it is necessary first to "define a relevant market, and [then to] determine whether a particular firm can exercise market power in the relevant market"); *United States v. Eastman Kodak Co*., 63 F.3d 95 (2d Cir. 1995) ("Without a definition of the relevant market, there is no way to measure a company's ability to act as a monopolist.") (citing *Walker Process Equip., Inc. v. Food Machinery & Chem. Corp*., 382 U.S. 172, 177 (1965)); *360° Communications Company and ALLTEL Corporation, Memorandum Opinion and Order*, 14 F.C.C.R. 2005, 2010 (WTB 1998) ("We begin our competitive analysis by determining the relevant product and geographic markets.") ("*360°/ALLTEL Order*"); *see also Applications of NYNEX Corporation and Bell Atlantic Corporation, Memorandum Opinion and Order*, 12 F.C.C.R. 19985, 20014 (1997) ("*Bell Atlantic/NYNEX Order*"); *Applications of Pittencrieff Communications, Inc. and Nextel Communications, Inc., Memorandum Opinion and Order*, 13 F.C.C.R. 8935, 8943 (WTB 1997) ("*Pittencrief/Nextel Order*").

[8] *See Report and Order* at ¶ 83 (citing Cingular Comments at 40-42; Verizon Wireless Comments at 15-16; VoiceStream/Western Reply Comments at 1-2, 5; RTG/OPASTCO Comments at 1, 8-9; CICC Comments at 1, 5-6, 8; CTIA Comments at 14 n.45).

same geographic area."[9] The Commission defines the relevant geographic market "by considering the territories over which a particular relevant product is or could readily be marketed."[10] In the case of CMRS, including cellular service, those territories are larger than a single RSA.

Local markets may have been the relevant unit for analyzing competition during the infancy of cellular service, but today CMRS services are typically offered on a national and regional level. While local service can still be purchased, it is rare that that such service will be limited solely to a particular RSA. In the case of these national and regional service plans, RSAs are simply not segregable from MSAs from a customer service standpoint. While some RSA licensees do not provide service nationwide, it is common for such licensees to acquire clusters of MSA and RSA licenses so as to provide service throughout an area much larger than a single cellular market. Thus, an examination of competition only on an RSA basis skews the competitive analysis in a way that does not reflect true service offerings. The Commission was obligated to consider competition at the regional and national level, consistent with its *Notice*,[11] prior to making its decision to retain the cross-interest rule in RSAs.

Moreover, the Commission's analysis fails to take into consideration that nationwide or regional rates do, in fact, have an effect at the RSA level. Even in a hypothetical worst-case

---

[9] *Bell Atlantic/NYNEX Order*, 12 F.C.C.R. at 20016 (1997) (citing *Tampa Elec. Co. v. Nashville Co*., 365 U.S. 320, 327 (1961)); *see also, e.g., Applications of Ameritech Corp. and SBC Communications, Inc., Memorandum Opinion and Order*, 14 F.C.C.R. 14712, 14746 (1999) ("*SBC/Ameritech Order*"); *360°/ALLTEL Order*, 14 F.C.C.R. at 2012; *Pittencrief/Nextel Order*, 13 F.C.C.R. at 8951.

[10] *360°/ALLTEL Order*, 14 F.C.C.R. at 2012.

[11] *See Notice of Proposed Rulemaking*, 16 F.C.C.R. at 2274; *see also, e.g*., Schwartz and Gale economic analysis on behalf of CTIA at 21.

scenario where a nationwide or regional cellular carrier has all 50 MHz of cellular spectrum and there are no PCS or SMR providers yet operating in the RSA, prices will be constrained in that market by the regional or national plans of the carrier in that market. In other words, RSAs will still receive the benefits of competition in adjacent MSAs. In addition, because licenses have been granted to PCS and SMR carriers in rural markets, the threat of additional competition also serves to constrain any anticompetitive actions by a single cellular carrier in that market. A carrier that attempted to substitute monopoly-like pricing after acquiring 50 MHz of cellular spectrum would give the area's PCS licensees a powerful incentive to build out and initiate service, because PCS service will now be more attractive than the incumbent cellular carrier's service.

Finally, the *Report and Order* fails to take into account the differences in RSAs, many of which surround MSAs and are part of the same general community of interest. In such RSAs, traffic levels, capacity demands, and demand for innovative services are generally the same as in the adjacent MSAs. The Commission's decision allows the MSA cellular blocks to be combined to bring greater capacity and service options to the MSAs, but not the adjacent RSAs, absent a waiver, thereby harming users who live, work, or commute in such areas. The decision also can have adverse consequences from a roaming perspective.[12] Accordingly, the Commission should reconsider its decision to continue to apply a prophylactic rule with the uncertain option of a waiver to *all* RSAs because of competitive concerns in *some* isolated or sparsely populated

---

[12] For example, assume Carrier A and Carrier B hold the A and B Block cellular licenses, respectively, in an MSA and in an adjacent RSA. Carrier A and Carrier B decide to merge, but because of the cellular cross-interest rule applicable to RSAs they have to divest the B Block cellular RSA license to a third carrier (Carrier C). The former RSA customers of Carrier B that
(continued on next page)

RSAs, especially given the availability of case-by-case review and other enforcement tools to address concerns to the extent they arise.

CONCLUSION

For the foregoing reasons, Cingular respectfully requests that the Commission reconsider its *Report and Order*.

Respectfully submitted,

CINGULAR WIRELESS LLC

By: /s/ J. R. Carbonell
J. R. Carbonell
Carol L. Tacker
David G. Richards
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342
(404) 236-5543

Its Attorneys

February 13, 2002

---

have been transitioned to Carrier C will now be considered roamers when they travel through the MSA. *See* discussion *supra* pp. 2, 4.